

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

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|-------------------------|---|----------------------------|
| MICHAEL DAVIS, #2036732 | § | |
| VS. | § | CIVIL ACTION NO. 6:16cv232 |
| DIRECTOR, TDCJ-CID | § | |

ORDER OF DISMISSAL

Petitioner Michael Davis, proceeding *pro se*, brings this petition for a writ of habeas corpus challenging his Smith County conviction for possession of a controlled substance. The petition was referred to United States Magistrate Judge K. Nicole Mitchell, who issued a Report and Recommendation (Dkt. #20) concluding that the petition should be dismissed because Mr. Davis did not exhaust his state habeas corpus remedies.

Mr. Davis has filed objections (Dkt. #22) to the Report and Recommendation. He stresses that he is not an attorney and does not know what he is doing. He added that his lawyer will not respond to his letters. Nonetheless, state prisoners must exhaust all remedies available in state court before proceeding in federal court unless there is an absence of an available state corrective process or circumstances exist which render the state corrective process ineffective to protect the prisoner's rights. 28 U.S.C. § 2254(b). In order to exhaust properly, Mr. Davis must “fairly present” all of his claims to the highest state court. *Picard v. Connor*, 404 U.S. 270, 275, 92 S. Ct. 509, 512 (1981). His claims must be presented to and ruled on by the Texas Court of Criminal Appeals. *Richardson v. Procnier*, 762 F.2d 429, 431-32 (5th Cir. 1985); *Tipton v. Thaler*, 354

F. App'x 138, 140 n.1 (5th Cir. 2009). Mr. Davis has not exhausted his state habeas corpus remedies. The form required by the Texas Court of Criminal Appeals is available in the law library. The form must be filed out and submitted to the Smith County District Clerk. The exhaustion requirement is not satisfied until the Texas Court of Criminal Appeals issues a decision on his application for a writ of habeas corpus.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Mr. Davis to the Report, the court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and Mr. Davis' objections are without merit. Therefore, the court adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the court. It is accordingly

ORDERED that the petition for a writ of habeas corpus is **DISMISSED** without prejudice for failure to exhaust state habeas corpus remedies. A certificate of appealability is **DENIED**. All motions not previously ruled on are **DENIED**.

So **ORDERED** and **SIGNED** this **9** day of **November, 2017**.

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge